



Maine Human Rights Commission

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INVESTIGATOR'S REPORT

H14-0673

HUD # 01-15-0137-8

March 27, 2015

██████ (Presque Isle)

v.

██████ (Presque Isle)

I. Complainants' Complaint:

Complainant ██████ alleged that Respondents ██████ and ██████ discriminated against her in housing on the basis of race where Respondents refused to show her a vacant apartment and refused to rent to her after seeing she has dark skin and is in a biracial relationship.

II. Respondents' Answer:

Respondents stated that they did not refuse to show or refuse to rent to Complainant because of her race or color. Mrs. ██████ did not have the keys to the apartment with her when she met Ms. ██████ to show the apartment and although she did not follow up with Ms. ██████ about another showing, it was not due to Ms. ██████ race or color.

III. Jurisdictional Data:

- 1) Date of alleged discrimination: November 10, 2014.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): January 7, 2015
Complainant's complaint was referred to the Commission from the federal Department of Housing and Urban Development ("HUD") on December 17, 2014.
- 3) Respondents are subject to the Maine Human Rights Act ("MHRA") and the federal Fair Housing Act, as well as state and federal housing regulations.
- 4) Complainants are represented by ██████ Respondents are represented by ██████
- 5) Investigative methods used: A thorough review of the written materials provided by the parties, a telephone interview, and a request for information to Respondents. This investigation is believed to be

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sufficient to enable the Commissioners to make a finding of "reasonable grounds" or "no reasonable grounds" in this case.

IV. Development of Facts:

1) The parties in this case are as follows:

- a) Ms. [REDACTED] is a biracial female of African-American heritage, and her skin is dark. She lives with her Caucasian boyfriend.
- b) Mr. and Mrs. [REDACTED] are members/owners of the company that owns [REDACTED] [REDACTED] [REDACTED] ("the Unit"). They also manage the property.

2) Complainant provided the following in support of her position:

- a) On November 6, 2014, Ms. [REDACTED] saw a listing in the newspaper for the Unit.
- b) Ms. [REDACTED] called the number listed in the advertisement and spoke with Mrs. [REDACTED]. Mrs. [REDACTED] told Ms. Gray that there were several one- and two-bedroom units available, including the Unit.
- c) At the time, Ms. [REDACTED] lived two buildings away from the Unit, and told Mrs. [REDACTED] that she was very interested in the Unit. Ms. [REDACTED] made an appointment to see the Unit on November 10, 2014, at 9:00 a.m.
- d) At 8:50 a.m. on November 10, 2014, Ms. [REDACTED] called Mrs. [REDACTED] to confirm their 9:00 appointment. Mrs. [REDACTED] was not able to make it at 9:00 a.m., so they moved the appointment to 10:00 a.m. Ms. [REDACTED] and her boyfriend arrived at the Unit and waited for 10 minutes. Ms. [REDACTED] then called Mrs. [REDACTED] who said she was ten minutes away, so they waited for Mrs. [REDACTED] to arrive.
- e) When Mrs. [REDACTED] arrived, they talked about the rabbit tracks in front of the house. Mrs. [REDACTED] went up the few stairs to the door and then stated that she had forgotten her keys, and there was no one she could call to bring the keys to her.
- f) Mrs. [REDACTED] did not try to open the door to the Unit.
- g) Mrs. [REDACTED] said that she could not show Ms. [REDACTED] the Unit. Mrs. [REDACTED] did not look in her vehicle or her coat for the keys.
- h) Ms. [REDACTED] asked Mrs. [REDACTED] if they could see the Unit later that afternoon. Mrs. [REDACTED] told Ms. [REDACTED] to call. Ms. [REDACTED] felt that Mrs. [REDACTED] was in a hurry to get away from her, and felt that the fact that Ms. [REDACTED] and her boyfriend were a biracial couple made Mrs. [REDACTED] feel uncomfortable.
- i) At 3:00 p.m., on November 10, 2014, Ms. [REDACTED] called Mrs. [REDACTED] and asked to see the Unit. Mrs. [REDACTED] stated that she could not show Ms. [REDACTED] the Unit, but said that she would take Ms. [REDACTED] name and number and have her son call Ms. [REDACTED] and show her the Unit when he was in the area.

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- j) Ms. [REDACTED] heard Mr. [REDACTED] in the background instructing Mrs. [REDACTED] to tell Ms. [REDACTED] something. Ms. [REDACTED] could not hear what Mr. [REDACTED] said. Ms. [REDACTED] gave Mrs. [REDACTED] her name and number, but never heard from Respondents or their son.
 - k) Ms. [REDACTED] checked her phone carefully in case she had missed calls, but she did not have any missed calls.
 - l) Ms. [REDACTED] never received an application for the Unit.
 - m) Ms. [REDACTED] is known in the community. She is a student and employed where she attends school. She has a radio program. She has seen Mrs. [REDACTED] around the town, and knows Mrs. [REDACTED] has seen her.
 - n) Respondents had previously rented to Ms. [REDACTED] boyfriend and would have had contact information for him, as well as for his mother, who was also a prior tenant of Respondents.
 - o) Mrs. [REDACTED] never told Ms. [REDACTED] that the building where the Unit was located might be sold. Mrs. [REDACTED] did not discuss the availability of any alternate units.
 - p) At the time Ms. [REDACTED] filed her complaint, the "for rent" sign was still in front of the Unit.
- 3) Respondents provide the following in response to Complainant's allegations:
- a) Mr. and Mrs. [REDACTED] advertise their rentals in the newspaper and sometimes with a "for rent" sign in the window of a unit. They give applications to people who are interested in the unit and usually show the unit.
 - b) Mrs. [REDACTED] showed the Unit to two or three other people before and/or after Ms. [REDACTED] and her boyfriend. Mrs. [REDACTED] did not receive an application from anyone who viewed the Unit. Mrs. [REDACTED] did not recall the race or color of the individuals who viewed the Unit, but believed they were Caucasian.
 - i. Mrs. [REDACTED] later stated that she did not show the Unit to anyone else after Ms. [REDACTED] because her real estate agent called within a week of November 10, 2014, to let Respondents know that there was a prospective buyer for the building.
 - ii. After November 10, 2014, Mr. and Mrs. [REDACTED] signed a purchase and sale agreement to sell the building where the Unit is located. They did not show the Unit from that point forward, but also did not remove the for rent sign. The building was sold on February 13, 2015.
 - c) Mrs. [REDACTED] stated that she agreed with Ms. [REDACTED] version of events up until she stated that Mrs. [REDACTED] did not look for the keys. Mrs. [REDACTED] looked for the keys to the Unit before she arrived, but could not find the keys. Mrs. [REDACTED] thought she may have given the keys to her son, and tried to call him but got no answer.

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- d) Mrs. [REDACTED] was hoping that the door to the Unit would be unlocked and that maybe the key had been inadvertently left inside.¹
 - e) Mrs. [REDACTED] did not agree with Ms. [REDACTED] perception that she was in a hurry to get away from Ms. [REDACTED]. Mrs. [REDACTED] stated that she may have had another commitment, but did not remember because she is often bombarded with numerous phone calls.
 - f) Mrs. [REDACTED] was not sure if Ms. [REDACTED] called her later to see if she had found the keys. Mrs. [REDACTED] did not remember getting Ms. [REDACTED] phone number to call her back even though Ms. [REDACTED] may have given it to her. Mrs. Martin stated that she may have thought to review her incoming calls later to write the number down, but did not do that thinking maybe Ms. [REDACTED] would call her at a later time to discuss a new appointment time.
 - i. Mrs. [REDACTED] stated that she was not sure what time Ms. [REDACTED] called, but the fact that her husband was in the background saying something sounded familiar because he does that often. Mrs. [REDACTED] did not recall what her husband said on this particular occasion.
 - A. Mr. [REDACTED] stated that he and Mrs. [REDACTED] operate a small motel, and Mrs. [REDACTED] office is adjacent to where he works in the lobby. Mr. [REDACTED] stated that Mrs. [REDACTED] is on the phone all day with prospective and current tenants. Mr. [REDACTED] stated that it is not uncommon for Mrs. Martin to ask him questions while she is on the phone or for him to continue conversations with her while she is on the phone. Mr. [REDACTED] stated that Mrs. [REDACTED] did not tell him who she was on the phone with when she was speaking to Ms. [REDACTED] and that any "background" conversation he may have had with Mrs. [REDACTED] did not relate to Ms. [REDACTED]
 - g) Mrs. [REDACTED] thought she may have given Ms. [REDACTED] an application because the phone number on Ms. [REDACTED] Commission complaint is the fax number that is on the rental application.
 - h) Mrs. [REDACTED] stated that she did not refuse to rent Ms. [REDACTED] the Unit. Mrs. [REDACTED] did not have a phone number available or an application to refer to for Ms. [REDACTED] phone number.
 - i. Mrs. [REDACTED] tried to find contact information for Ms. [REDACTED] boyfriend and his mother, since she rented to them before. She was not able to find a telephone number to contact either of them.
 - i) Mr. and Mrs. [REDACTED] currently rent to members of several racial minorities, including those who are African-American.
 - j) Mrs. [REDACTED] stated that fact that Ms. [REDACTED] and her boyfriend are a biracial couple did not make her uncomfortable.
- 4) Ms. [REDACTED] boyfriend provided the following information in a telephone interview:
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¹ Mrs. [REDACTED] stated that the Unit had to be broken into to replace the door knob, but the key was found in another work vehicle that was out of commission because Respondents could not afford to fix it.

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- a) When Mrs. [REDACTED] arrived, as soon as she looked up and saw them she patted her vest and said that she did not think she had her keys. He thought it was a strange situation. Mrs. [REDACTED] told them that she would have her son get a hold of them to show them the Unit, but she never did. The whole interaction occurred in less than five minutes.
- b) When asked what his perception was of how he and Ms. [REDACTED] were treated, he stated that at first he did not know what to think about the interaction, but that it was odd to him. After speaking with Ms. [REDACTED] about it, and looking at the sequence of events, it seemed like Ms. [REDACTED] did not want to rent to them.

V. Analysis:

- 1) The MHRA provides that the Commission or its investigator "shall conduct such preliminary investigation as it determines necessary to determine whether there are reasonable grounds to believe that unlawful discrimination has occurred." 5 M.R.S. § 4612(1)(B). The Commission interprets the "reasonable grounds" standard to mean that there is at least an even chance of Complainants prevailing in a civil action.
- 2) The MHRA provides, in part, that any person has the right to rent an apartment without discrimination on the basis of race or color, and that it is unlawful to refuse to show or rent a dwelling on the basis of race or color. 5 M.R.S. § 4581-A(1)(B); 94-348 C.M.R., Ch. 8, § 8.04(a)(1). The MHRA further provides, in part, that it is unlawful to engage in "discrimination in the terms, conditions or privileges of... rental of a dwelling, or in the provision of services or facilities in connection with... rentals, and engaging in conduct relating to providing housing because of race or color." 5 M.R.S. § 4581-A(1)(D); 94-348 C.M.R., Ch. 8, § 8.04(a)(2, 3)
- 3) Here Complainant alleged that she was discriminated against in housing on the basis of race and/or color because she was denied an opportunity to see the Unit and rent the Unit. Respondents stated that Complainant was not denied the opportunity to see or rent the Unit because of race or color, and that Mrs. [REDACTED] did not have the keys with her at the time of the showing and the building ended up being purchased.
- 4) Because this case does not involve direct evidence, Complainant establishes a prima-facie case of unlawful housing discrimination by proving (1) that Complainant is a member of a protected class; (2) that Complainant applied for and was qualified to rent the Unit; (3) that Respondent rejected Complainant; and (4) that the housing accommodation remained available thereafter. *See United States v. Grishman*, 818 F. Supp. 21, 23 (D.Me. 1993); *HUD v. Blackwell*, 908 F.2d 864, 870 (11th Cir. 1990).
- 5) Once Complainant has established a prima-facie case, the burden of production, but not of persuasion, shifts to Respondents to articulate a legitimate, nondiscriminatory reason for its action. *See United States v. Grishman*, 818 F. Supp. at 23; *HUD v. Blackwell*, 908 F.2d at 870; *Doyle v. Dep't of Human Servs*, 2003 ME 61, ¶ 15, 824 A.2d 48, 54. After Respondents have articulated a nondiscriminatory reason, Complainant must (to prevail) demonstrate that the nondiscriminatory reason is pretextual or irrelevant and that unlawful discrimination brought about the adverse housing action. *See id.* Complainant's burden may be met either by the strength of Complainant's evidence of unlawful discriminatory motive or by proof that Respondents' proffered reason should be rejected. *See Cookson v. Brewer School Department*, 2009 ME 57, ¶ 16; *City of Auburn*, 408 A.2d at 1262, 1267-68. Thus, Complainant can meet their overall burden at this stage by showing that (1) the circumstances underlying the articulated reason are untrue, or (2) even if

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true, those circumstances were not the actual cause of the decision. *Cookson v. Brewer School Department*, 2009 ME 57, ¶ 16.

- 6) In order to prevail, Complainant must show that she would not have suffered the adverse action but for membership in the protected class, although protected-class status need not be the only reason for the decision. *See Maine Human Rights Comm'n v. City of Auburn*, 408 A.2d 1253, 1268 (Me. 1979).
- 7) Here, Complainant has established a prima-facie case of race and color discrimination in housing. Complainant is a member of a protected class. For purposes of this analysis, it is assumed that Complainant was able to afford to rent the unit. Complainant did not apply to rent the Unit, but she did ask to view the unit and set up an appointment to do so. After showing up to meet Complainant and her boyfriend, Mrs. [REDACTED] did not show them the Unit. The Unit remained available after Complainant's inquiry.
- 8) Respondents have articulated a legitimate, nondiscriminatory reason for not showing Complainant the Unit and thereby not renting to her. At the time of the appointment to show Complainant the Unit, Mrs. [REDACTED] could not find the keys to the Unit and was unable to get inside to show the Unit. Also, Respondent entered into a purchase and sale agreement to sell the Unit shortly after Complainant's appointment to view the Unit.
- 9) At the final stage of the analysis, there is not sufficient evidence to show Respondents' reason for not showing or renting to Complainant was false or irrelevant and that race and/or color was a deciding factor in their decision not to show or rent to Complainant, with reasoning as follow:
 - a. Complainant stated that after showing up to view the Unit, she felt that Mrs. [REDACTED] was trying to get away from her. Complainant also stated that Mrs. [REDACTED] told her to call her later to see if her son could show the Unit, and when Ms. [REDACTED] did call, she gave Mrs. [REDACTED] her information and never heard back from her or her son.
 - b. Mrs. [REDACTED] stated that she realized she did not have the keys to the Unit when she arrived and thought it may be unlocked. When Complainant called later to schedule another appointment to view the Unit, Mrs. [REDACTED] could not recall why she did not have Complainant's number to call her back. Mrs. [REDACTED] stated that she thought Complainant would call back, but she did not. Mrs. [REDACTED] also stated that she tried to look for a number for Complainant's boyfriend as well as his mother in order to try to reach Complainant and her boyfriend, but Mrs. [REDACTED] was unable to find a number for either of them.
 - c. In this case, the record does not support that Respondents discriminated against Complainant due to her race or color. Respondents currently rent to several tenants who are racial minorities including African-Americans. Mrs. [REDACTED] provided that she is constantly getting phone calls from current and prospective tenants. While Complainant argues that Respondents' explanation regarding losing the keys is implausible, the records shows that, at least on this day, Mrs. [REDACTED] appeared to be over-extended. She was late for the initial appointment with Complainant, and was late for the rescheduled appointment later that morning as well. Based on both parties' statements of the events, it appears that Mrs. [REDACTED] was not keeping on her schedule and was easily distracted.

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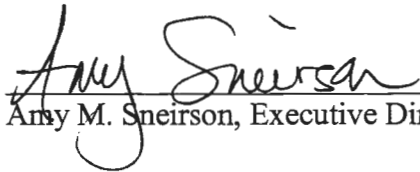
- d. While Complainant understandably felt Mrs. [REDACTED] was trying to rush away from her and her boyfriend, when looking at the totality of the circumstances, the argument is speculative, and the record does not support that the reason Complainant was not shown the Unit was her race or color.
- e. Additionally, soon after Complainant's appointment to view the Unit, Respondents received interest in the building from a potential buyer, and ultimately sold the building which included the Unit. Respondents stated that they did not show the Unit to any other prospective applicants after Complainant.² The Unit remained vacant and was not rented to anyone. Complainant argued that Respondents have several other properties that they could have shown or mentioned to Complainant as alternative housing opportunities, but Respondents were not required to do so.
- f. In the end, there is no evidence to show that Respondents' actions were motivated by any discriminatory reason. Rather, it appears that Mrs. [REDACTED] was having difficulty keeping on track, and Complainant was left feeling that she was brushed off. While this may be true, there is nothing to suggest that the reason was Complainant's race or color, and not Mrs. [REDACTED] apparent disorganization on the day in question.

10) Discrimination in the refusal to show or rent on the basis of race and/or color is not found.

VI. Recommendation:

For the reasons stated above, it is recommended that the Commission issue the following findings:

1. There are **No Reasonable Grounds** to believe that Respondents [REDACTED] [REDACTED] discriminated against Complainant [REDACTED] [REDACTED] on the basis of race or color by refusing to show and/or rent her a dwelling; and
2. The complaint should be dismissed in accordance with 5 M.R.S. § 4612(2).


Amy M. Sneirson, Executive Director


Victoria Ternig, Chief Investigator

² Respondents were at least less certain of this earlier, and may have contradicted this statement in a prior submission when they stated that the Unit was shown to two or three people "before and or after" Complainant was scheduled to view the Unit.